

**IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL.**

Writ Petition No. 1792(S/B) 2002

Khyat Singh Negi, Retired Head Master,
At present R/o Gram Pali, Patti Kapholsiyun,
Tehsil Pauri, District Pauri Garhwal. ----- Petitioner.

Versus

1. State of U.P., through Secretary Education,
Sachivalaya, Lucknow, Uttar Pradesh,
2. Joint Director of Education, Garhwal Mandal,
Pauri, District Pauri Garhwal,
3. District Basic Education Officer, Pauri Garhwal,
Pauri, District Pauri Garhwal --- Respondents.

Sri U.P. S. Negi, learned counsel for the petitioner.
Smt. Beena Pandey, learned Standing Counsel for State of U.P./respondent no. 1,
Sri N.P. Sah, learned Standing Counsel for the State of Uttarakhand /respondents nos. 2 & 3.

Hon'ble M.M. Ghildiyal, J.

Heard Sri U.P. S. Negi, learned counsel for the petitioner,
Smt. Beena Pandey, learned Standing Counsel for State of
U.P./respondent no. 1 and Sri N.P. Sah, learned Standing
Counsel for the State of Uttarakhand /respondents nos. 2 & 3.

Though, time was granted to the respondents to file
counter affidavit, but not counter affidavit has been filed by
respondent no. 1.

By means of this writ petition, the petitioner has prayed
for the following reliefs:-

- (a) Issue a writ, order or direction in the nature of
mandamus commanding the respondents to make

payment of the petitioner's commuted pension amounting to Rs. 66,276/- alongwith interest @ 18% per annum from the date 01.07.1997 till the date of its actual payment,

- (b) Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case in favour of the petitioner,
- (c) Award the cost of the petition in favour of the petitioner.

Briefly stated, that the petitioner retired from his services on 30th June 1997, when he was posted as Head Master of Primary School, Naudiyal Gaon, Block Kaljikhil, district Pauri Garhwal on attaining the age of superannuation. The petitioner commuted 1/5 part of his pension amounting to Rs. 66,276/- and after commutation of 1/5 part of the pension he is presently receiving a sum of Rs. 3,630/- as pension. The respondents have not made payment of the amount of commutation of his pension consequently, he was constrained to file application before the District Consumer Forum, Pauri Garhwal which was registered as case no. 90 of 2000. During the pendency of the aforesaid proceedings before the District Consumer Forum, the respondents assured the petitioner that they will make payment of commuted pension, if the petitioner withdraws his case from the Consumer Forum. On the assurance of the respondents, the petitioner has withdrawn the aforesaid case from the District Consumer Forum. However, deceived by the respondents, the petitioner has yet not been paid the commuted pension amounting to Rs. 66,276/-, though he is getting pension to the tune of Rs. 3,630/-, after necessary adjustment on account of commutation of pension.

The respondent no. 1, who has to make the payment of commutation of pension, has not filed any counter affidavit. Only the respondent nos. 2&3 have filed their counter affidavit, in which they have stated that in respect of a work which was supervised by the petitioner, he was asked to deposit a sum of Rs. 71,800/- vide letter dated 24th January 2003 and when the respondents did not receive any reply of the aforesaid letter, payment of commuted pension was stopped by the respondents.

It is admitted fact that the petitioner was retired sometime in the year 1997. At the time of his retirement no inquiry was pending against him. The Department might have also issued no objection certificate that's why the petitioner has been paid other retiral benefits and after about six years' of his retirement, a letter is being sent by the respondents to the petitioner to deposit as sum of Rs. 71,800/- alleging that in regard to the work done by him during his service tenure, he had spent only Rs. 1,48,200/- against the sanctioned sum of Rs. 2,20,000/-.

It is also not disputed that neither any inquiry was contemplated against the petitioner during his service tenure nor till the letter dated 24th January 2003 issued by the respondents any inquiry has been initiated against him. Therefore, without holding any inquiry, the respondents cannot withhold the amount of commuted pension.

The respondent in the counter affidavit have nowhere stated that any inquiry is initiated against the petitioner till dated.

In the circumstances mentioned above, I deem it fit and proper to direct the Director of Pension, U.P. to make payment of commutation pension of the petitioner amounting to Rs. 66,276/- alongwith interest @ 6% per annum thereon, within a period of three months from the date of production of a certified copy of this order.

With these directions, the writ petition is finally disposed of .No order as to cost.

(M.M. Ghildiyal, J.)

March 21, 2007:

NCM: